

**THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**  
December 17, 2002

**IN RE:**

**KNOXVILLE LAWN CARE, INC. A/K/A  
SCOTTS LAWN SERVICE**

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**DOCKET NO. 02-00326**

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before the Tennessee Regulatory Authority (“Authority” or “TRA”) at a regularly scheduled Authority Conference held on November 18, 2002, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the “CSD”) and Knoxville Lawn Care, Inc. a/k/a Scotts Lawn Service (“Scotts Lawn Service” or the “Company”) related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.<sup>1</sup> The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone

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<sup>1</sup> See Tenn. Code Ann. § 65-4-401 *et seq.*

solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.<sup>2</sup> “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”<sup>3</sup>

The CSD’s investigation in this docket commenced after it received a complaint on February 11, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Scotts Lawn Service on February 2, 2002. The CSD provided Scotts Lawn Service with notice of this complaint on February 13, 2002.

Although Scotts Lawn Service had registered in the Do-Not-Call Program on March 13, 2001, it had failed to re-register by June 30, 2001 and its registration had expired at the time the alleged violation occurred. Between February 21 and April 12, 2002, the CSD received four additional complaints from persons properly listed on the Do-Not-Call Register, each alleging that a person acting on behalf of Scotts Lawn Service made an unlawful telephone solicitation.

The proposed Settlement Agreement was negotiated as a result of the CSD’s investigation into the complaints against Scotts Lawn Service. The maximum penalty faced by Scotts Lawn Service in this docket is twelve thousand dollars (\$12,000) arising from the five (5) complaints and the failure to re-register in the Do-Not-Call Program

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<sup>2</sup> See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

<sup>3</sup> Tenn. Code Ann. § 65-4-405(f).

while conducting telephone solicitations in this State. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Scotts Lawn Service, which is located in Knoxville, Tennessee, employs approximately fifteen (15) persons. During the investigation, Scotts Lawn Service contacted the CSD and expressed an interest in resolving this matter. In addition, Scotts Lawn Service renewed its registration with the TRA as a telephone solicitor on October 11, 2002. Scotts Lawn Service also agreed to pay to the Authority the amount of nine thousand dollars (\$9,000) in settlement of these violations. The first payment of two thousand dollars (\$2,000) shall be paid no later than thirty (30) days from the date the Authority approves the Settlement Agreement.<sup>4</sup> The remaining seven (7) payments of one thousand dollars (\$1,000) shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months. The TRA has received no additional complaints from Tennessee consumers regarding Scotts Lawn Service arising after April 12, 2002.

A representative of Scotts Lawn Service participated telephonically during the Authority Conference on November 18, 2002. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and

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<sup>4</sup> The payments may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing Docket No.02-00326.

approve the Settlement Agreement.

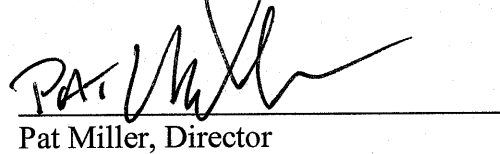
**IT IS THEREFORE ORDERED THAT:**

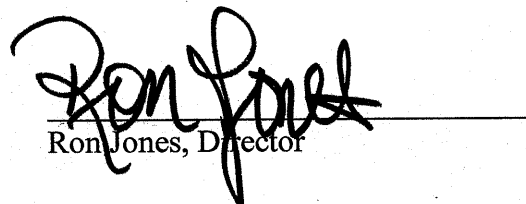
1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.

2. The amount of nine thousand dollars (\$9,000) shall be paid by Scotts Lawn Service to the TRA. The first payment, of two thousand dollars (\$2,000), shall be paid no later than thirty (30) days from the date of the Authority's approval of the Settlement Agreement. The remaining seven (7) payments of one thousand dollars (\$1,000) shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months.

3. Upon payment of the amount of nine thousand dollars (\$9,000) and compliance with the terms of the Settlement Agreement attached hereto, Scotts Lawn Service is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Scotts Lawn Service to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.

  
Sara Kyle, Chairman

  
Pat Miller, Director

  
Ron Jones, Director

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

IN RE:	)		
	)		
ALLEGED VIOLATIONS OF TENN.	)		
CODE ANN. §65-4-401 <i>et seq.</i> , DO-NOT-	)		
CALL SALES SOLICITATION LAW,	)	DOCKET NO.	02-00326
AND RULES OF TENNESSEE	)		
REGULATORY AUTHORITY, CHAPTER	)		
1220-4-11, BY:	)	DO-NOT-CALL	T02-00074
	)	PROGRAM	T02-00095
KNOXVILLE LAWN CARE, INC. A/K/A	)	FILE NUMBERS	T02-00100
SCOTTS LAWN SERVICE	)		T02-00223
	)		

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Knoxville Lawn Care, Inc. a/k/a Scotts Lawn Service ("Scotts Lawn Service" or the "Company"). This Settlement Agreement pertains to five (5) complaints received by the CSD alleging that Scotts Lawn Service violated the Tennessee Do-Not-Call Telephone Sales Solicitation law, TENN. CODE ANN. § 65-4-401 *et seq.*, and its concomitant regulations, TENN. COMP. R. & REGS. 1220-4-11.07. This Settlement Agreement is subject to the approval of the Directors of the TRA.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. Tenn. Code



Ann. § 65-4- 405(d) requires that persons or entities desiring to make telephone solicitations to residential subscribers shall pay an annual registration fee and obtain the Do-Not-Call Register prior to conducting such telephone solicitations.

Scotts Lawn Service initially registered in the Do-Not Call Program on March 13, 2001. That registration expired on June 30, 2001. Scotts Lawn Service renewed its registration on February 7, 2002. After its registration expired on June 30, 2002, Scotts Lawn Service renewed its registration in the Do-Not Call Program on October 11, 2002.

The CSD's investigation in this docket commenced after it received a complaint on February 11, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Scotts Lawn Service on February 2, 2002. The CSD provided Scotts Lawn Service with notice of this complaint on February 13, 2002. The CSD received a second complaint on February 21, 2002, alleging that a person acting on behalf of Scotts Lawn Service made an unlawful telephone solicitation to a person properly listed on the Do-Not-Call register on January 29, 2002. The CSD provided Scotts Lawn Service with notice of this complaint on February 28, 2002. The CSD received the third and fourth complaints on February 26, 2002. The complainant, a person properly listed on the Do-Not-Call register, alleged that a person acting on behalf of Knoxville Lawn Service made two unlawful telephone solicitations, on February 1 and 4, 2002. The CSD provided Knoxville Lawn Service with notice of the complaints on February 27, 2002 and March 11, 2002, respectively. The CSD received the fifth complaint on April 12, 2002. The complainant, a person properly listed on the Do-Not-Call register, alleged that a person acting on behalf of

Scotts Lawn Service made an unlawful telephone solicitation on April 3 2002. The CSD provided Scotts Lawn Service with notice of this complaint on April 16, 2002.

TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Scotts Lawn Service in this proceeding is twelve thousand dollars (\$12,000), arising from the five (5) telephone solicitations mentioned above and the act of continuing to conduct telephone solicitations after its registration in the Do-Not-Call Program had expired.

In negotiating this Settlement Agreement, CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status, good faith, and the gravity of the violation. Scotts Lawn Service is located in Knoxville, Tennessee with offices in Chattanooga and Johnson City, Tennessee. It employs approximately fifteen (15) persons. After receiving notice of the complaints, Scotts Lawn Service contacted the CSD and expressed an interest in resolving this matter. The CSD has received no additional complaints from Tennessee consumers since April 3, 2002.

In an effort to resolve these complaints, represented by the file numbers above, CSD and Scotts Lawn Service agree to settle this matter based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Scotts Lawn Service neither admits nor denies that the five (5) complaints against it are true and valid complaints and that it acted in violation of TENN. CODE ANN. §65-4-404 and TENN. COMP. R. & REGS. 1220-4-11.07(1).

2. After receiving notice of the complaints Scotts Lawn Service contacted CSD and expressed an interest in resolving this matter. In addition, Scotts Lawn Service renewed its registration with the TRA as a telephone solicitor on February 7, 2002 and October 11, 2002 and receives a monthly copy of the Do-Not-Call register.
3. Scotts Lawn Service agrees to pay nine thousand dollars (\$9,000.00) in settlement of these complaints, and agrees to remit the amount of two thousand dollars (\$2,000.00) to the Office of the Chairman of the TRA no later than thirty (30) days after the Directors of the TRA approve this Settlement Agreement.<sup>1</sup> The remaining seven (7) installments of one thousand dollars (\$1,000.00) each shall be remitted to the TRA no later than the first business day of each month for the next seven (7) consecutive months. Upon payment of the amount of nine thousand dollars (\$9,000.00) in compliance with the terms and conditions of this Settlement Agreement, Scotts Lawn Service is excused from further proceedings in this matter.
4. Scotts Lawn Service agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. Scotts Lawn Service agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that Scotts Lawn Service fails to comply with the terms and conditions of this Settlement Agreement, the Authority reserves the right to re-open this docket. Scotts Lawn Service shall pay any and all costs incurred in enforcing the Settlement Agreement. Should any subsequent violation of the provisions of paragraph 4 occur,

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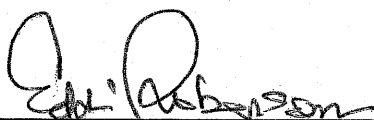
<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing TRA Docket No. 02-00326.



such violation shall be treated as a new violation and shall not be cause to re-open this docket.

7. If any clause, provision or section of this Settlement Agreement shall, for any reason, is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect any other clause provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
8. This Settlement Agreement represents the entire agreement between the parties, and there are no representation, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

KNOXVILLE LAWN CARE, INC.  
A/K/A SCOTTS LAWN SERVICE



Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

10-24-02

Date



Signature

Tom M. Hall

Print Name

PROES

Print Title